Ontario

and

MEMORANDUM OF UNDERSTANDING

101-06317/

Tourism and Forestry Industry

MEMORANDUM OF UNDERSTANDING

Purpose:

This Memorandum establishes a framework for negotiating Resource Stewardship Agreements (RSA's) that will allow the Resource-Based Tourism and Forestry industries in Ontario to co-exist and prosper. This memorandum sets the general principles and minimum content for an RSA. The Resource-Based Tourism and Forestry industries in Ontario agree to respect and adhere to this Memorandum, and to negotiate RSA's in good faith. This memorandum is intended to direct RSA negotiations between Sustainable Forest Licencees and Resource-Based Tourism Establishment Licencees in Ontario and is endorsed by a steering committee comprised of representatives from the Forestry Industry, the Resource-Based Tourism Industry, the Ministry of Natural Resources (MNR), the Ministry of Tourism (MTOUR) and the Ministry of Northern Development and Mines (MNDM).

Principles:

This Memorandum is based on mutual recognition of and respect for the legitimacy and presence of the tourism and forestry industries.

In particular:

A. The Forest Industry of Ontario recognizes the importance of resource-based tourism industry operations in the forests of Ontario;

B. The Resource-Based Tourism industry of Ontario recognizes the importance of forest industry operations in the forests of Ontario;

C. The Forest and Resource-Based Tourism industries desire a pro-active long term approach to conducting operations and resolving conflicts involving their respective activities in the forests of Ontario;

D. The Forest and Resource-Based Tourism industries will, on a voluntary basis, promote each other's interests to third parties when reasonable and appropriate.

E. The MNR, MTOUR, MNDM and the two industries recognize the following interests as critical to the continued success and viability of industry operations:

1: For the forest industry:

(a) minimize the cost of wood delivered to the mill;

(b) no long term reduction in the supply of fibre and timber;

(c) security and accessibility of fibre supply;

(d) sustainability of the forest resource for future generations;

(e) protection of other forest values; and

(f) management of the forest resource in accordance with legislative and policy requirements governing forest management planning in Ontario;

(g) sustainability and enhancement of fibre supply, timber supply and forestry opportunities necessary for forestry industry viability;

2: For the Resource Based Tourism industry:

(a) natural aesthetics;

(b) remoteness, including maintenance of traditional means of access;

(c) maintenance of the perception of wilderness, including minimization of noise;

(d) sustainability and enhancement of fish, game, and wilderness opportunities necessary for tourism operations; and

(e) maintenance of the perception of Ontario as a world class wilderness tourism destination;

Terms of Agreement

Therefore, the two industries agree in this Memorandum as follows:

1. Every Forest Management Plan (FMP) in Ontario will include a statement confirming the commitment of part of the FMP to maintain the viability of the tourism industry by protecting tourism values in the forest management planning process through the application of the Timber Management Guidelines for the Protection of Tourism Values (the Guidelines) and the use of RSA's as one method of protecting and sustaining these values;

2. The MNR, MTOUR, and the tourism and forest industries will approve criteria that will permit the mapping of tourism values. This mapping will be developed and maintained as part of each FMP. The MNR and MTOUR will provide a draft of proposed criteria to the two industries within 60 days of completion of this Memorandum. The Working Group or its representatives will define the criteria at a meeting with MNR and MTOUR to be held within 90 days of the completion of this Memorandum. In the event a dispute over the criteria remains after this meeting, MNR and MTOUR will define the criteria.

3. The Guidelines will include a list of tools available to address the Tourism and Forestry interests set out in this Memorandum, and provide guidance in creating the prescriptions in a particular RSA. In addition, the Guidelines will not contradict any provision to this Memorandum.

4. Every RSA shall as a minimum follow the framework and contain the terms set out in Appendix "A" to this Memorandum.

5. This is the entire agreement, and if any term is changed without the express consent of all signatories, then the agreement is void.

Appendix A: Framework of an RSA

1) An RSA is an agreement negotiated between two legal entities: a Resource Based Tourism Establishment licencee (RBT) as determined by the Ministry of Tourism, and a Sustainable Forest Licencee (SFL). If the parties so agree, an RSA may involve more than one RBT, and more than one SFL but each RSA will be signed by an individual RBT and an individual SFL. If multiple parties are involved, the parties by negotiation may agree on a Management Structure to implement the RSA. This right to negotiate an RSA will be extended to the successors to such RBT designations as MTOUR may determine.

2) An RSA will contain:

   a) A map containing the projected twenty (20) year primary road corridors, the projected five year secondary road corridors, and Tourism values to be protected over the next twenty (20) year period;

   b) A statement of the principles in this Memorandum;

   c) A section containing the prescriptions affecting forest management that will be approved by the MNR and included as part of a Forest Management Plan (FMP) under the Crown Forest Sustainability Act (CFSA); and

   d) Any other provisions the parties agree to that are not part of an FMP.

3) Nothing in the RSA shall abrogate or derogate from or add to Aboriginal or treaty rights.

4) All RSA's will comply with all provincial legislation and polices. Only parties to RSA's will be bound by RSA's.

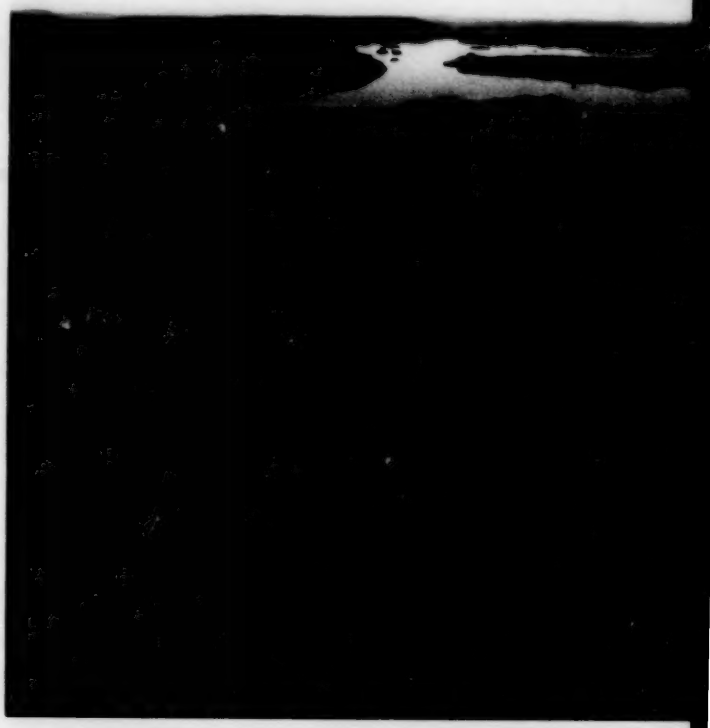
5) The RSA negotiation process will normally be commenced prior to the Invitation to Participate in the FMP process and completed for the first Information Centre Open House. The SFL will contact by registered mail, during the appropriate time of the year to ensures the general availability of the RBT, all RBT's who operate in the Forest Management Unit (FMU). Each RBT will receive the projected 20-year primary and five year secondary road corridors from the SFL as part of the initial contact. The SFL will negotiate with any RBT who notifies the SFL that it wishes to negotiate an RSA. Thirty (30) days after sending the initial contact letter, the SFL will provide the MTOUR with a list of those RBT's who have not responded. If the SFL does not receive notice within thirty (30) days from MTOUR or the RBT that the RBT is interested in negotiated an RSA, then the SFL may presume that the respective business interests are protected by application of the ecological guidelines. The MNR will consider the RBT's failure to seek negotiations in its approval of an FMP.

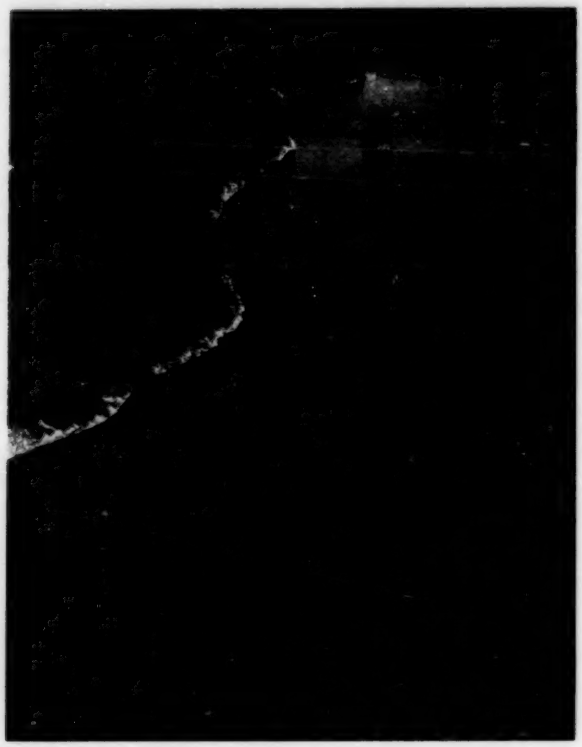
6) Parties agree in RSA negotiations to apply prescriptions to protect specific tourism values. Where the tourism operator has identified remoteness as a value to be protected, then the prescriptions identified in the Tourism Guidelines shall be applied to maintain a reasonably similar level of remoteness as existed prior to forest management operations. The prescriptions to be considered will include, but are not limited to: no harvest areas; functionally roadless strategies; modified operations.

7) The RSA process up to and including the arbitration process, if any, will be completed before recourse to the Forest Management Planning
dispute resolution process or the right to an EA "designation request" are available.

8) If the RBT has contacted the SFL but is unwilling to commence negotiations to complete an RSA, then the SFL will be able to complete operations in accordance with the ecological guidelines applicable to the area. If the SFL is unwilling to commence negotiations to complete an RSA, then the MNR will in its discretion either not approve an FMP for that FMU, or will not approve the commencement of harvesting operations. For the purpose of this paragraph "unwilling to commence negotiations" means refusing to meet with the other party.

9) If the parties are unable to negotiate an RSA, then either party may seek mediation. The mediation will last a maximum of one day unless otherwise agreed by all parties, and will be conducted by the MNR or a mediator appointed by the MNR. The mediation will be conducted within fifteen (15) days of the request for mediation. If the MNR determines that a mediation is impractical or impossible within fifteen (15) days, then no mediation will be conducted unless the parties otherwise agree. Mediation is confidential, and any offers, options or discussions regarding potential settlements will not be disclosed in or used as the basis for a decision in any subsequent proceeding.





10) If the parties do not agree at mediation, then an arbitration will be conducted on the following terms:

- the arbitration will be completed within thirty (30) days of the request for arbitration,
- the maximum duration of the arbitration shall be two (2) days;
- each party will pay to the MNR five hundred ($500) dollars towards the cost of arbitration;
- the arbitrator will be selected by the MNR from a regional list of arbitrators approved by the two industries;
- where the dispute affects a lake where timber harvesting practices are by clear-cutting (as defined in the revised Tourism Guidelines), the arbitrator shall make a decision based on the principles of this Memorandum in order to allocate fifty (50) percent of the Mutual Allocation Zone to each party. The Mutual Allocation Zone is defined as a zone extending two hundred (200) metres from the shoreline of the lake and within the area defined as the five year timber allocation. Each party must define for and present to the arbitrator, a map and rationale showing one half of the area in the zone to be designated as a no-cut reserve, and one half of the area in the zone to be designated as harvest, so long as no zone designation contravenes the ecological Forest Management Planning Guidelines of which define the minimum distance from shoreline available for harvest.
- for all other issues the arbitrator shall decide as he or she considers just and appropriate in accordance with the following documents:
  a) the principles contained in this Memorandum;
  b) the Forest Management Planning Guidelines; and
  c) the map of values and projected road patterns.
- the Arbitrator may award costs to a maximum of an additional one thousand ($1000) dollars against an unreasonable party, to be paid to the successful party.

11) In the event the parties are not satisfied with the result of the arbitration, either may then use the other legal remedies available to resolve disputes under the CFSA or the EA Act, when they become available.

12) Every RSA that is completed by negotiation or mediation will be deemed to comply with the normal application of the Guidelines, but only for the purpose of confirming that no "beneficiary pay" charge will be applied to such RSA's.

13) Every RSA that is completed as a result of the RSA arbitration process, the Forest Management Planning dispute resolution process, or an EA "designation request" will be subject to a determination by the MNR, after completion of the relevant FMP, and in light of the final terms of the RSA as included in the FMP. The MNR will determine whether there is protection in excess of the normal application of the Guidelines, whether there is a beneficiary, whether there is a loss or cost to the SFL, and, if so, order payment of the amount the cost or losses to the SFL. In the event the MNR determines that the normal application of the Guidelines has not been achieved, it may order the payment of compensation to the RBT.

14) Every RSA shall:

a) be an evergreen agreement, if agreed to, or shall have a minimum term equal to the term of the FMP and a planning horizon of at least 20 years;

b) be transferable, on the following terms:

i. Any transferee who is an RBT (or non-licenced tourism operator who takes reasonable steps at the time of the transfer to become an RBT and receives a licence within a reasonable time) or SFL must agree to be bound by the terms of the RSA;

ii. A transfer to a non-licenced tourism operator, except those described in subsection (i) above, or any person other than an RBT or SFL will void the requirements and obligations of the RSA; and

iii. Notice will be provided to the parties to an RSA, to the MNR, and to MTOUR by the transferor prior to the transfer;

c) be amendable only on mutual consent of the parties or as a result of the amendment of the FMP by order of the MNR;

d) have prescriptions which will protect the tourism values identified in the RSA through the application of the Guidelines and the inclusion of the prescriptions in the FMP;

e) contain a commitment to share information and a list of reference material available for use in negotiating the RSA;

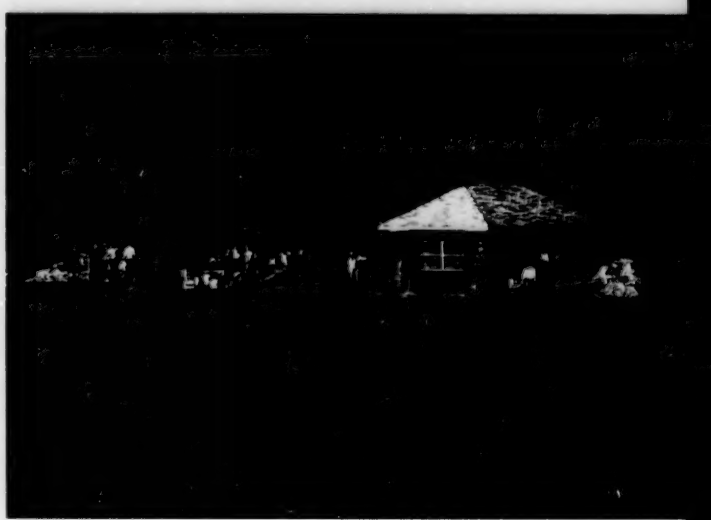
f) apply to a specific geographic area determined by the results of the RSA negotiations and agreed to by the parties; and

g) be a commitment binding on all overlapping licencees of the SFL.

15) Auditing, Monitoring, enforcement and reporting for those portions of the RSA included in an FMP will be conducted by the MNR and the SFL in accordance with FMP requirements.

16) Every RSA, to the extent it is included or referenced in an FMP, is subject to final approval by the MNR. In the event an RSA is amended as a result of an order of the MNR, the parties to the RSA will meet to determine whether further negotiations are required.

17) The parties will be responsible for monitoring and enforcing sections of the RSA that are not included in an FMP.

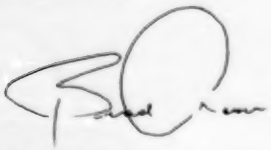


Dated: June 7, 2000

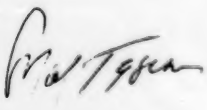
[The original was signed and dated as indicated in italics:]

We the undersigned, as members of the RSA Working Group, do hereby recommend to the Steering Committee for approval, the attached Agreement, entitled "Tourism and Forestry Industry Memorandum of Understanding, Revision #5",

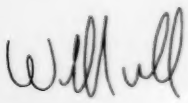
Dated the 26th day of April, 2000 in the City of Toronto, Province of Ontario.



Brad Greaves

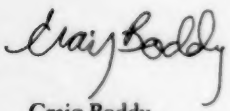


Mal Tygesson



Bill Roll

Bill Thornton

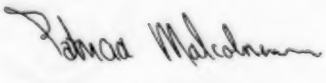


Craig Boddy

Sergio Buonocore

We the undersigned as members of the RSA Steering Committee do hereby recommend to the Ministers of Natural Resources, Northern Development and Mines, and Tourism for approval, the attached Agreement entitled "Tourism and Forestry Industry Memorandum of Understanding", dated June 7, 2000.

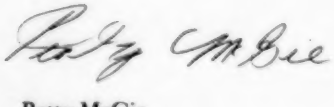
DATED



Patricia Malcolmson — June 28, 2000

Jim McClure — June 29,2000

Jean Lam — July 21/00



Betty McGie — July 7,2000

Peter Elmhirst — July 18, 2000

Don Hopkins June 29, 2000

Jim Lopez July 11, 2000

Glen Swant July 7, 2000

We the undersigned recognise and support the "Tourism and Forestry Industry Memorandum of Understanding."

John C. Snobelen
Minister of Natural Resources

Tim Hudak
Minister of Northern Development and Mines

Cam Jackson
Minister of Tourism

Notes